

Baseball Free Agency And Salary Arbitration

I. INTRODUCTION

Baseball has been played in this country for almost 130 years, growing from a simple game played mostly for exercise and recreation into a multi-million dollar business and the national past time.¹ Yet it has only been in the last decade that professional baseball players have earned annual salaries in excess of one million dollars.² Back-up and role players³ typically sign long-term contracts guaranteeing millions of dollars. To place this phenomenon into perspective, in 1975, Andy Messersmith, a highly talented and sought-after pitcher for the Los Angeles Dodgers was dissatisfied with his salary of approximately \$115,000.⁴ In 1986, Mike Schmidt, the All-Star third baseman of the Philadelphia Phillies, earned \$2,127,333.⁵ The price for a coveted ballplayer has increased twenty-fold in little over a decade. Average player salaries demonstrate a similar increase. In 1975, the average player's annual salary was \$44,676. In 1986, it had increased to \$412,550.⁶

1. According to The Sporting News's "1987 Official Baseball Guide," 47,506,203 fans attended major league baseball games in 1986.

2. In the winter of 1986-87 alone, eight players submitted annual salary demands of more than one million dollars during salary arbitration. The eight players were: Wade Boggs of the Red Sox, Jack Morris of the Tigers, Don Mattingly of the Yankees, Jesse Barfield and George Bell of the Blue Jays, Orel Hershiser of the Dodgers, and Ron Darling and Dwight Gooden of the Mets. This figure does not include such notable free agents as Tim Lincecum, Andre Dawson, and Rich Gedman who had not signed contracts with anyone by opening day and so did not participate in arbitration. Nor does it include spring training holdouts like Roger Clemens who are not eligible for arbitration or free agency. See *infra* notes 83-84 and accompanying text.

3. These are players who do not play for the team on a daily, game-to-game basis, but instead fill certain part-time roles: e.g., defensive replacement, pinch-hitter, or long relief-spot starter. See *Baseball Salaries '87*, SPORTS ILLUSTRATED, Apr. 20, 1987, at 54.

4. Sobel, *The Emancipation of Professional Athletes*, 3 W. ST. U.L. REV. 185, 205 (1976). See also Newhan, *Messersmith Still Stalled*, L.A. Times, Oct. 30, 1975, (Sports), at 1, col. 2. Messersmith played the entire 1975 season without signing a new contract, because the Dodgers refused to include either a no-trade clause or a clause giving him the right to approve any trade involving him.

5. Bodley, *Mattingly Gets Record: Arbitrator Sides With Yankee for \$1.975 M*, USA Today, Feb. 2, 1987, at C1, col. 3. Accompanying this article is a chart showing the top five 1987 player salaries. They are:

Mike Schmidt, 3B, Philadelphia,	\$2,127,333
Jim Rice, OF, Boston	\$2,109,195
George Brett, 3B, Kansas City	\$2,105,000
Eddie Murray, 1B, Baltimore	\$2,044,757
Don Mattingly, 1B, New York Yankees	\$1,975,000

6. Macnow, *Messersmith, McNally: They Had No Idea....*, The Sporting News, Feb. 9, 1987, at 33, col. 2.

What is the cause of this dramatic shift in economic worth of the ballplayer? One prominent factor may be the advent of a more structured and equal bargaining process between players and management. It is the purpose of this note to examine baseball's salary dispute resolution process and its relation to this meteoric rise in salaries paid to professional baseball players, as well as its effect on the game.

II. HISTORY

Although Abner Doubleday is traditionally credited with inventing the game, two conventions in 1857 and 1858 established the first uniform set of rules. At first, baseball was played on a strictly amateur basis, but professionalism inevitably crept into the sport.⁷ Professionalism became a "foregone conclusion" when, in 1868, Cincinnati assembled the first all-professional team, losing only one game in two years.⁸ Other teams in the league quickly realized that only by hiring a team of professional players could they remain competitive. By 1871, the National Association of Baseball Players was created, consisting of nine teams with a regular schedule.⁹ This organization became the National League of Baseball Clubs in 1875,¹⁰ the forerunner of today's National League. From then on, the game has been played professionally, and in a relatively organized manner.

Just a few years after the new league formed, it encountered two problems that still exist today. These problems and their solutions played a major role in shaping the modern game. The emergence of free agency and the salary arbitration process are the progeny of the heavy-handed manner in which baseball management dealt with these initial problems.

The first problem was player discipline. In 1877, four players charged with throwing games were banned from the game for life.¹¹ The punishment for this violation is not as important as the manner in which it was determined. The league unilaterally decided the punishment with no resort to the courts.¹² This established a precedent; the league governed itself, "keeping its own house clean" without outside interference. This idea that the league should govern itself remained strong for decades, and remains part of managements' governing philosophy today. In 1946, an observer noted: "Baseball depends almost entirely on its own powers

7. Note, *Baseball and the Law - Yesterday and Today*, 32 VA. L. REV. 1164, 1165 (1946). See also Moreland, Balldom & Strayton, *Baseball Jurisprudence*, 44 AM. L. REV. 374 (1910).

8. Note, *supra* note 7, at 1165 n.9. The annual wages for players on this first professional team ranged from \$800 to \$1,400.

9. *Id.* at 1165.

10. *Id.*

11. *Id.*

12. *Id.*

in settling its problems. Through the years organized baseball has had to handle its own difficulties with very little assistance from the courts; and it has been able to do this only because of its tight-knit monopolistic structure which makes exclusion of dissenters the means of enforcing its decisions and edicts."¹³ This policy of tight self-regulation was a major contributor to the comparatively low salaries paid to major league ballplayers until the 1970's.¹⁴

The second problem the new league faced was personified in "Orator Jim" O'Rourke.¹⁵ In 1879, O'Rourke became upset when his team, the Boston Beaneaters, would not buy him a uniform. His solution was simply to quit the Boston team and sign on with the Providence team.¹⁶ In response to O'Rourke's actions, the owners of the major league teams met secretly that year and devised the infamous "reserve system" in an effort to combat this problem of players "jumping" from team to team.¹⁷ The idea was simple and effective. Initially, the reserve system was a gentleman's agreement between the owners that each owner could produce a list of players "off-limits" to the rest of the league.¹⁸ These players were "reserved" to one team only, and the owners agreed not to lure away or contract with a player reserved to another team. A few years later, this system was formalized and a "reserve clause" was written into the contracts of all major and minor league players.¹⁹

13. *Id.* at 1164.

14. *See supra* notes 4-6 and accompanying text.

15. Jim O'Rourke played from 1876 to 1893 for, among others, Boston, Providence, and Buffalo as a player-manager. During his career he played in 1,774 games, and collected 2,304 hits compiling a .310 career batting average. In 1877, he led the league in runs scored, and three years later he led the league in homeruns with a grand total of six. O'Rourke is now a member of baseball's Hall of Fame. *See THE BASEBALL ENCYCLOPEDIA* 1216 (J. Reichler 5th ed. 1982).

16. Boswell & McKeown, *Baseball—From Trial by Law to Trial by Auction*, 4 J. CONTEMP. L. 171 (1978). Interestingly, he played only one season for Providence. After the 1879 season, he returned to Boston for one year before moving on to Buffalo.

17. *Id.* at 173.

18. *Id.* At first the number of players reserved for each team was kept low. The original agreement allowed a team to reserve only five players.

19. The reserve clause is a mandatory provision of the Uniform Players' Contract. Section 10(a) of the 1973-75 contract which affected Andy Messersmith stated:

On or before December 20 (or if a Sunday then the next preceding business day) in the year of the last playing season covered by this contract, the Club may tender to the Player a contract for the term of that year by mailing the same to the Player at his address following his signature hereto, or if none be given, then at his last address of record with the Club. If prior to the March 1 next succeeding said December 20, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the Player shall be such as the Club shall fix in said notice; provided, however, that such amount, if fixed by a Major League Club, shall be an amount payable at a rate not less than 80% of the rate stipulated for the next preceding year and at

The effect of the reserve clause was that a team would have exclusive rights to a player's services for the year succeeding the contract year. In essence, a ballplayer signing a contract containing a reserve clause (and all of them had it), was bound to that team for life. If, at the end of the contract's term, the player, for whatever reason, had a dispute with his employer, he was not free to seek employment in baseball elsewhere. The reserve clause bound that player to one team not only for the term of the contract, but for the succeeding season as well. The player's only choices were to accept the offer made by the owner, hope for a trade, or find employment outside of baseball. The owners had the power to make a "take-it-or-leave-it" offer to any player under contract, and any player attempting to sit out a year to gain "free agency" status found himself blacklisted and unable to play anywhere in the National League.²⁰

The reserve system was roundly criticized by most players who likened it to a system of slavery. John Montgomery Ward, a player who put himself through law school with the money he made playing, labelled the clause "a fugitive slave law... which denied [a ballplayer] a harbor or a livelihood and carried him back, bound and shackled, from (sic) the club from which he attempted to escape."²¹ It was, however, the owner's most effective solution to a dilemma as old as the game itself: "[O]n the one hand there is the desirableness, bordering on necessity, of being able to retain players as long as they are needed by the team, and on the other the financial necessity of being able to release them when they are no longer of value."²² The reserve system accomplished this goal admirably; owners indentured players indefinitely, while retaining the power to release the player with only ten days' notice. This system created legal concerns regarding the mutuality of the contract's obligations, but surprisingly, this issue was never successfully pursued in court.²³

a rate not less than 70% of the rate stipulated for the year immediately prior to the next preceding year.

Uniform Players' Contract, Section 10(a), 1973-1975. See Note, *Arbitration of Professional Athletes' Contracts: An Effective System of Dispute Resolution in Professional Sports*, 55 NEB. L. REV. 362, 371 n.40 (1976).

20. Martin, *The Aftermath of Flood v. Kuhn: Professional Baseball's Exemption from Antitrust Regulations*, 3 W. ST. U.L. REV. 262, 266 (1976).

21. Boswell & McKeown, *supra* note 16, at 174.

22. Note, *supra* note 7, at 1168.

23. See, e.g., *Philadelphia Ball Club v. Hallman*, 8 Pa. C. 57 (1890). Hallman sold his services for life to the Philadelphia Ball Club for \$1,400 per annum. Yet, according to the contract, Hallman had no hold on the Ball Club for any period longer than ten days. The County Court of Philadelphia noted that "such a contract is so wanting in mutuality that no court of equity would lend its aid to compel compliance with it." *Id.* at 63. But see *Ford v. Jermon*, 6 Phila. 6 (1865); *American Ass'n Baseball Club of Kansas City v. Pickett*, 8 Pa. C. 232 (1890), where the courts, while not compelling the

Although the reserve system was disliked by the players, no one doubted its effectiveness at solving the dilemma of player control. Even John Montgomery Ward, who spoke out so vehemently against the evils of the system, was forced to acknowledge the stability it infused into the game's management: "The reserve rule on the whole, is a bad one; but it cannot be rectified save by injuring the interests of the men who invest their money."²⁴ Therefore, from its clandestine beginnings in 1879, the reserve system grew to be an integral part of baseball in only a few short years. The system, though hated by the players, gained strength when met with approval by the federal judiciary.²⁵

These two management principles, tight institutional control and the reserve clause, gave baseball owners monopolistic power to run the game as they saw fit. They possessed absolute authority to dictate the terms and conditions of player's employment, and the power to deal harshly with those who tried to change the system.

III. LEGAL CHALLENGES

As can be expected, players often chaffed under these conditions, yet the courts were not at all receptive to the concept of "ballplayers in bondage." In 1931, the absolute power of the Commissioner of Baseball to control the game's internal affairs was upheld in federal court.²⁶ On three separate occasions, the United States Supreme Court was called on to rule on the legality of the reserve clause. Each time, the Court looked the other way, despite the clause's obvious antitrust implications.

The first reserve clause challenge came in 1922 in the case of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*.²⁷ In this case, the reserve clause was challenged by a rival league which was attempting to lure star players away from the established National League. In his brief to the Court, National League counsel George Wharton Pepper laid out the team owners' arguments in defense of the reserve clause:

From the point of view of the club, the reserve clause is absolutely necessary, for otherwise a skillfull player developed at the expense of one club would be snapped up by another and the clubs would always be engaged in a competition for players. Experience shows the disastrous results to the sporting public, to the clubs and to the players, which have always ensued at times when reservations have not been respected and there was unrestrained bidding for players.²⁸

player to play with his club, nevertheless enjoined him from playing for another team during the time covered by the contract.

24. Boswell & McKeown, *supra* note 16, at 174.

25. See *infra* notes 26-40 and accompanying text.

26. *Milwaukee American Ass'n Baseball Club v. Landis*, 49 F.2d 298 (N.D. Ill. 1931).

27. 259 U.S. 200 (1922).

28. See Brief on behalf of the Defendants-in-Error at 71-72, *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). See also Boswell & McKeown, *supra* note 16, at 176.

The Supreme Court accepted the argument. Justice Holmes, speaking for a unanimous Court, held further that the reserve clause did not violate the antitrust laws because baseball itself was not a business engaging in interstate commerce.

The business is giving exhibitions of baseball, which are purely state affairs. It is true that in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and states. But the fact that in order to give the exhibitions the League must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business.²⁹

The second challenge to the system was offered by a minor league player in the New York Yankees organization, Earl Toolson. Toolson objected to being assigned to different locations within the Yankee farm system³⁰ at management's whim. Others believe Toolson realized the Yankees were a talent-laden club and simply wanted out of the system so he would have a better chance of making a major league roster.³¹ The league relied heavily on *Federal Baseball* in its second defense of the reserve clause before the Supreme Court:

It would probably be an overstatement to assert that if the *Federal Baseball* case were reversed there would be no more professional baseball. But certainly the present organization which has brought the sport to its present great popularity could not continue. The uncertainty which would undoubtedly prevail, before any remedial legislation could be enacted as to the extent of the control baseball clubs and leagues could exercise over their players to insure the integrity of the game and adequate talent to each club in a league so as to keep the teams evenly balanced would undoubtedly result in the wrecking of the present organization of the game. This obviously would not be of any benefit to the players or the public.³²

Again, the Court accepted the owners' argument and affirmed *Federal Baseball*.³³

The third and final challenge to the reserve system came in 1972 in

29. *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200, 208-09 (1922).

30. The farm system is a series of minor league baseball teams affiliated with every major league team. These teams are arranged by skill levels. Currently there are four such levels: Rookie, A, AA, and AAA. The least experienced players begin with the Rookie league team, and move their way up the chain as they refine their skills and abilities.

Toolson's status as a member of a minor league club was not unusual. Almost all players spend at least some time in the minor leagues gaining experience and closely supervised coaching before playing at the major league level. See also Boswell & McKeown, *supra* note 16, at 177.

31. Boswell & McKeown, *supra* note 16, at 177.

32. Brief for Respondents at 66-67, *Toolson v. New York Yankees*, 346 U.S. 356 (1953).

33. *Toolson v. New York Yankees*, 346 U.S. 356 (1953).

Flood v. Kuhn.³⁴ In that case, Cardinal outfielder Curt Flood was traded to the Philadelphia Phillies. Flood refused to report to the Phillies, instead claiming the right to sit out for a year and then sign on with any team in the League. In the meantime, he filed an antitrust action against baseball management.³⁵

Flood had good reason to believe that a suit against the League would result in a finding that the reserve clause was violative of antitrust laws. Since *Toolson*, the Court had held that other forms of entertainment did not warrant a special exemption from antitrust laws, including theater,³⁶ boxing,³⁷ and professional football.³⁸ The Court's movement in this direction indicated that the antitrust exemption granted to baseball as early as *Federal Baseball* would be overturned.

In *Flood*, team owners made their usual pleas to the Court, claiming that the reserve clause was necessary to: (1) maintain balanced competition; (2) preserve the game's integrity and public confidence; (3) protect and provide incentive for Baseball's extraordinarily high player development costs; and (4) maintain the benefits which the reserve clause had brought with respect to economic stability.³⁹ The Supreme Court surprisingly agreed with management's arguments and for the third time in fifty years ruled that baseball was exempt from the restrictions of the antitrust laws. In his majority opinion, Justice Blackmun recognized that this position was rather inconsistent with its rulings regarding other forms of entertainment, but he solved the contradiction in this manner:

If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court. . . . Under these circumstances, there is merit in consistency even though some might claim that beneath that consistency is a layer of inconsistency.⁴⁰

The Court, then, had for the third time denied a judicial remedy to ballplayers seeking relief from the burden of the reserve clause. Since the judicial remedies seemed to be exhausted, it was not surprising that ballplayers would turn to a non-judicial resolution of their problem. That resolution was arbitration.

34. 407 U.S. 258 (1972).

35. *Id.* at 264-66.

36. *United States v. Schubert*, 348 U.S. 222 (1955).

37. *United States v. International Boxing Club of New York*, 348 U.S. 236 (1955).

38. *Radovich v. National Football League*, 352 U.S. 445 (1957).

39. Brief for Respondents at 6-12, *Flood v. Kuhn*, 407 U.S. 258 (1972).

40. *Flood v. Kuhn*, 407 U.S. at 258, 284 (1972).

IV. FREE AGENCY — THE DESTRUCTION OF THE RESERVE CLAUSE

In 1975, arbitrator Peter Seitz issued a ruling in the Messersmith-McNally case that changed the character of baseball forever.⁴¹ Two pitchers, Andy Messersmith and Dave McNally, challenged the reserve system, claiming that since they had refused to sign contracts for the 1975 baseball season, they were free to sign with anyone they wished. Messersmith was under contract for the 1974 season with the Los Angeles Dodgers, but could not reach an agreement with Dodger management for the following season.⁴² The Dodgers, invoking the reserve clause, held Messersmith for the 1975 season, even though he did not sign a contract. They granted him a small pay increase for that year, but refused to offer a no-trade clause or a "right of refusal of any trade" clause. Since these provisions were not offered, Messersmith refused to sign, but he did play the following season. At the end of that season, Messersmith and the Dodgers had still not reached an agreement, and Messersmith claimed the right to become a free agent. Since he had played out his "option year" with the Dodgers without signing a contract, he claimed the club no longer had any contractual control over his services. The Dodgers, however, claimed that when Messersmith refused to sign in the spring of 1975, they simply renewed his contract with a slight salary increase, as was their right under the terms of the 1974 contract.⁴³ Among the clauses in this new contract for 1975 was another reserve clause, binding Messersmith to the club for the 1976 season, despite the fact that he had signed nothing since the spring of 1974. Under this argument, the Dodgers could control the rights to Messersmith's services *ad infinitum*.⁴⁴

Arbitrator Seitz held that because of "careless wording" in the contract between management and players, the reserve clause did not really mean what most players thought it meant.⁴⁵ He ruled that a player could become a free agent by giving notice to his team one year before his contractual obligations expired, that Messersmith was free to put himself up for auction to the highest bidder.⁴⁶ On the open market, Messersmith's immediate value was 1.5 million dollars.⁴⁷ Seitz, of course, was fired by baseball owners within hours of making this decision,⁴⁸ and thus the era of baseball free agency began.

As players gained the right to become free agents, baseball man-

41. *In re Professional Baseball Clubs*, 662 Ab. Arb. (BNA) 101 (1975) (Seitz, Arb.).

42. See Newhan, *supra* note 4.

43. See Sobel, *supra* note 4, at 205-11.

44. *Id.*

45. Boswell & McKeown, *supra* note 16, at 172.

46. Macnow, *supra* note 6.

47. *Id.*

48. Boswell & McKeown, *supra* note 16, at 172.

agement predicted the worst. They feared that quality players would gravitate to better teams, and the league would polarize into the "haves" and the "have nots."⁴⁹ Surprisingly the opposite occurred. Rather than the established teams grabbing up the star players from the weaker teams, the weaker teams began offering large salaries in an effort to lure accomplished players away from the contenders.⁵⁰ Free agents, it seemed, were more highly sought after by teams coming off poor seasons.⁵¹ Stronger teams, on the other hand, did not see the need to participate in the free agent market.⁵² This resulted in star players moving toward the struggling teams.

This movement was both unexpected by management and beneficial to the game. Baseball, as any other organized sport, does not operate on a laissez-faire marketplace system. The object of the various teams is not to put the others out of business. Instead, baseball operates on the theory that the League is only as strong as its weakest team. Therefore, the migration of talent to the weaker "links of the chain" actually strengthened the League as a whole by making every team more competitive. In this respect, free agency is a boon to the League, especially to its weaker members.

From the team owners' vantage point, the free agency system also had a disastrous side effect which they had predicted. This effect is described by former Baltimore Orioles General Manager Hank Peters as "The Law of Increasing Desperation."⁵³ Simply put, increasing desperation is the fear that strikes the rest of the League when one team signs a quality free agent. The other teams realize that one of their competitors has just strengthened itself, while they have done nothing. The previously idle teams begin to panic, and they jump into the free agent market in an attempt to keep pace with their rivals. The result is that the price for the remaining free agents escalates according to the law of supply and demand instead of in relation to the player's talent and usefulness. This desperation is fueled by the press and fan anticipation. The fans of every team want to see their team improve

49. *Id.* at 181. This idea that free agency would ruin league balance was called the "Crushing Dynasty" theory.

50. *Id.* In 1976, the first official "free agent" year, the first ten "million dollar" free agents all went to teams with worse records than those they left.

51. Harry Daulton, Milwaukee Brewers' General Manager, noted that "losing teams know these free agents are like a vein of gold in the ground. . . . Unless your team is an absolute economic disaster, you're going to take the risk and go prospecting." *Id.* at 183.

52. Economists Roger Noll and Benjamin Okner of the Brookings Institute testified before a Senate Antitrust Subcommittee in 1971 that all things being equal, a good player is worth more to a talent-poor team than to a talent-rich one. *Id.*

53. *Quoted in id.*

over the off-season, especially if a rival team has signed a "big-name" player.

The "Law of Increasing Desperation" was repealed in 1985. In that year, owners for the first time exercised what has been called, alternatively, financial restraint,⁵⁴ fiscal sanity,⁵⁵ or collusion.⁵⁶ The result was an abrupt halt in "the spirited bidding for players,"⁵⁷ and a grievance filed by the Players Association. On September 21, 1987, arbitrator Thomas T. Roberts ruled that baseball club owners did in fact act in concert to block the movement of free agents.⁵⁸ To support his finding of collusion, Roberts cited a memorandum distributed in October of 1985 by then-Director of the Player Relations Committee, Leland S. MacPhail, to baseball's general managers. That memorandum urged team owners to avoid long-term contracts because players signed to such contracts "frequently do not thereafter perform to the level of their ability or suffer injuries that force them to leave baseball while still enjoying the salary benefits of the contracts."⁵⁹ MacPhail went on to declare: "We must stop daydreaming that one free agent signing will bring a pennant. Somehow we must get our operation back to the point where a normal year for the average team results in a break-even situation, so that the Clubs are not led to make rash moves in the vain hope that they might bring a pennant and a resulting change in their financial position. This requires resistance to fan and media pressure and is not easy."⁶⁰

54. Major League Player Relations Committee Chief Barry Rona, *quoted in* Bodley, *Baseball's Next Step: Starting It Out*, USA Today, Sept. 22, 1987, at C1, col. 3.

55. See Chass, *It's the Great Salary Slowdown: But Is It Collusion Against Free Agency, Or a Return to Fiscal Sanity?*, The Sporting News, Feb. 9, 1987, at 32-33.

56. See *supra* Bodley, note 54. Many observers accuse the owners of collusion since the winter of 1986 due to the lack of free agent movement. As Richard Moss, a players' lawyer, stated, "[w]hat they're [the team owners] trying to do . . . is destroy free agency so they can artificially lower salaries. They want to scare off free agents and make the players think they're going to destroy their careers if they become free agents. It has nothing to do with restraint or fiscal responsibility, as they say. It has to do with destroying the system so they can get back to previous times, perhaps the 1960s." Richard Moss, *quoted in* Chass, *supra* note 55, at 33, col. 2.

57. Chass, *Players Are Expected to Benefit as Result of Collusion Ruling*, N.Y. Times, Sept. 22, 1987, at A1, col. 1.

58. Major League Baseball Players Ass'n v. The Twenty-Six Major League Baseball Clubs, Major League Baseball Association Panel, Grievance No. 86-2 (Sept. 21, 1987) (Roberts, Arb.).

59. *Excerpts From the Ruling*, N.Y. Times, Sept. 22, 1987, at A32, col. 1.

60. *Id.* Note how closely MacPhail's language parallels Peters' description of "The Law of Increasing Desperation." See *supra* note 52 and accompanying text. Specifically, Roberts held that "[t]he Clubs violated Article XVIII(H) of the Basic Agreement following the completion of the 1985 championship season by acting in concert with regard to the free agency provisions of the said Article XVIII." Article XVIII establishes professional baseball's system of free agency, and paragraph H thereof prohibits concerted action between two or more Clubs or between two or more players when exercising rights guaranteed in Article XVIII. Major League Baseball Players Ass'n v. The Twenty-Six

Arbitrator Roberts' decision is a victory for the players in their fight for additional control of professional baseball. For nine years, players enjoyed a relatively free market with accompanying escalating salaries. Then, in 1985, baseball owners, according to Roberts, acted in concert to restrict that freedom. A crucial question remains: Can a remedy be fashioned making club owners bid for the services of a free agent?⁶¹ Clearly, baseball teams will jealously guard the right to "build the team through the farm system" instead of the free agent market.⁶² Therefore, aside from monetary damages and a "moral victory,"⁶³ it is questionable if any remedy can materially alter the owners' posture compelling them to bid on free agent players. Team owners and players are destined to wrestle over player movement as the effectiveness of any remedy is tested.

V. SALARY ARBITRATION

"Our attitude toward the arbitration process and its overall effects on our salary structure remains firm: it is absolutely devastating to us."

—Joe McDonald, General Manager, St. Louis Cardinals⁶⁴

Major League Baseball Clubs, Major League Baseball Arbitration Panel, Grievance No. 86-2 (Sept. 21, 1987) (Roberts, Arb.).

61. Bodley, *Arbitrator Ready to Find Collusion Cure*, USA Today, Sept. 23, 1987, at C1, col. 3.

Though Roberts ordered owners to cut out the monkey business..., both sides must agree to a remedy. That will not be easy. In fact, we could end up with another drawn-out hearing all over again. In the meantime, the owners' behavior will be monitored clearly.

If, as Player Relations Committee executive director Barry Rona insists, the owners are committed to financial responsibility, restraint or whatever, they are not going to change the way they run their businesses.

"Nobody is going to tell me to go out and sign a free agent and nobody is going to tell me not to sign a free agent," said New York Yankees owner George Steinbrenner, one of the biggest spenders for free agents before 1985-1986.

...
Like it or not, the owners have made their point. It has been too dramatic, too drastic, but they have reduced the number of franchises losing money. At least half the teams will make money and perhaps as few as four will lose money.

Id.

Bodley concludes his article by observing that players and owners are becoming increasingly adversarial, and the owners' current practice of free agent restraint is only promoting "the bitterness between the two sides...." He warns that "[u]nless there is a drastic change in the adversarial relationship between the two sides, there will be a strike" after the 1989 season, when the current collective bargaining agreement expires. *Id.*

62. See Goodwin, *Both Ballplayers and Owners Await Forthcoming Remedies*, N.Y. Times, Sept. 22, 1987, at A23, col. 4.

63. Pittsburgh Pirates Malcom Prine stated, "We are obviously disappointed with Mr. Roberts' decision, but we will continue to build the Pirates through the farm system and trades. The re-entry [free agent] system will not play a significant role." Malcom Prine, quoted in Bodley, *supra* note 54.

64. Quoted in Grebey, *Another Look at Baseball's Salary Arbitration*, 38 ARB. J. 24, 25 (Dec. 1983).

Although the Supreme Court held that baseball is exempt from the requirements of the antitrust laws,⁶⁵ it is still subject to the requirements of the National Labor Relations Act.⁶⁶ Therefore, the League and the Player's Union are obligated to bargain, and one topic for discussion is salaries. Under the old reserve clause system, management made the player an offer which the player was "free" to accept or reject. If the offer was rejected, the only way to pressure the owners into offering a better deal was to "hold out"; that is, stay away from training camp, and perhaps the first games of the season. If the player was valuable enough to the team, then the owner might increase the offer. If he was not so valuable, "[the player's] only alternative to accepting his club's final salary offer was retirement from baseball."⁶⁷

Arbitration was endorsed by some baseball officials as early as 1952, when then-Commissioner A. B. "Happy" Chandler endorsed the use of binding salary arbitration "because of the inferior bargaining position of the player who may negotiate with only one employer."⁶⁸ The owners, however, preferred the existing reserve clause system; they had absolute authority to determine the amount of the last offer made. Under binding arbitration, they feared that the arbitrator might award an amount greater than their offer, thus depriving them of the power to control their own payroll.

Baseball's arbitration process is based on the "last best offer" principle. Under this system, the parties bargain to impasse on the topic of salary. Once it is determined that continued negotiations would be fruitless, both management and player submit one proposed salary figure to the arbitrator. The arbitrator then holds hearings, allotting one and one half hours for each side to present their evidence. The arbitrator must choose one figure or the other, either the player's or management's, and award the player that salary for the next season. There is no opinion issued with the arbitrator's decision, and the decision must be made in twenty-four hours.⁶⁹ This process, in contrast to pre-arbitration "negotiations", is a no-lose situation for the player. He either receives the figure offered by the team (the figure he would have been forced to accept before arbitration) or the higher figure he submits. In exchange, owners generally avoid "hold outs" and have a complete team in training camp each spring.

65. See *supra* notes 27-40 and accompanying text.

66. National Labor Relations Act, ch. 372, 49 Stat. 449 (1935) (current version at 29 U.S.C. § 160 (1984)).

67. Note, *Arbitration of Grievance and Salary Disputes in Professional Baseball: Evolution of a System of Private Law*, 60 CORNELL L. REV. 1049, 1056-66 (1974-1975).

68. *Id.* at 1065.

69. See Grebey, *supra* note 64, at 24-30.

The practical effect of this system is that both sides have incentive to keep the figures they submit within reason. If one proposal is too extreme, the other wins almost by default.

The criteria on which the arbitrator bases the decision are as follows: (1) the quality of the player's contribution to his club during the past season (including performance, leadership, and public appeal); (2) length and consistence of a player's career performance; (3) the player's past compensation; (4) comparative baseball salaries; (5) the existence of physical or mental defects affecting performance; and (6) the club's recent performance.⁷⁰

Topics specifically excluded from discussion are the following: (1) the financial position of the player and the club; (2) press comments, testimonials, or similar material bearing on the performance of either the player or the club, except that recognized player awards for playing excellence shall not be excluded; (3) offers made by either player or club prior to arbitration; (4) the cost to the parties of their representatives, attorneys, etc.; and (5) salaries in other sports or occupations.⁷¹

In 1986, arbitrators heard twenty-six salary arbitrations, but eighty-three were decided between the parties before the case went to arbitration. Of those that went to arbitration, management won sixteen, and the players won ten.⁷²

A cursory glance at the salary figures reveal that salary arbitration is an effective dispute settlement method, even though only a small number of cases are actually completed in arbitration. The last best offer method of decision encourages both parties to submit reasonable figures. In fact, one player, Atlanta pitcher David Palmer, after deciding to have his salary determined through arbitration after negotiations failed, discovered the figures he and management submitted were identical.⁷³ More often, the player and management submit salary figures that are reasonably similar, and they settle prior to the actual arbitration on a salary somewhere between the two.

Most importantly, the system provides a means by which the players themselves have a voice in determining what their salaries will be. Andy Messersmith, baseball's first real free agent said this about his free agency fight: "It was less of an economic issue at the time than a fight for the right to have some control over your own destiny. . . . It was just a matter of being tired of going in to negotiate a new contract and

70. *Id.* at 26.

71. *Id.*

72. The following is a chart of all the major league players who filed for salary arbitration in the winter of 1986-1987 and the eventual outcome: (all figures in thousands of dollars)

73. See *supra* note 64.

hearing the owners say, 'OK, here's what you're going to get. Tough luck.'"⁷⁴ Arbitration, as it is practiced today, allows players an opportunity to effectively bargain with management to an unprecedented degree.

Although arbitration provides players with a stronger voice in determining their own salaries, and free agency allows for freer movement between teams, these two avenues of player participation do have shortcomings. One major effect results from the interplay of free agency and arbitration. Free agency features competitive bidding between clubs

Player/TEAM	1986 Salary	Player Demand	Club Offer	1987 Award	Salary Settlement
BALTIMORE					
M. Boddicker, p	\$ 812	890	750	—	800
R. Bordi, p	235	330	275	—	305
B. Havens, p	90	200	140	—	165
J. Shelby, of	225	350	275	—	300
BOSTON					
M. Barrett, 2b	435	695	565	—	575
W. Boggs, 3b	1,350	1,850	1,600	—	1,600
D. Boyd, p	375	695	550	550	—
B. Hurst, p	495	845	700	700	—
S. Owen, ss	240	400	305	—	350
CALIFORNIA					
G. Pettis, of	300	550	400	400	—
D. Schofield, ss	210	475	305	475	—
CHICAGO WHITE SOX					
B. James, p	555	575	455	—	470
CLEVELAND					
C. Bando, c	225	420	275	—	305
B. Butler, of	850	875	765	765	—
C. Castillo, of	165	262	225	—	247.5
J. Franco, ss	575	800	740	—	775
M. Hall, of	330	575	525	—	550
B. Jacoby, 3b	375	750	575	—	612.5
P. Niekro, p	250	650	425	—	500
K. Schrom, p	225	545	450	450	—
P. Tabler, 1b	375	650	500	—	580
T. Waddell, p	270	270	216	—	250
DETROIT					
J. Grubb, of	250	425	275	—	365
J. Morris, p	875	1,850	1,350	1,850	—
P. Sheridan, of	150	230	150	—	190
KANSAS CITY					
B. Black, p	645	645	550	—	600
M. Gubicza, p	250	490	425	—	450
C. Liebrandt, p	770	850	725	850	—
MILWAUKEE					
None					

74. Macnow, *supra* note 6, at 33.

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MINNESOTA					
K. Atherton, p	137	369	265	—	300
G. Gaetti, 3b	515	975	815	—	900
T. Laudner, c	155	285	205	—	245
M. Smithson, p	450	625	500	—	540
F. Viola, p	674	900	774	—	830
NEW YORK YANKEES					
C. Guante, p	307.5	455	380	—	405
C. Hudson, p	265	350	265	—	305
R. Kittle, of	400	450	400	—	425
D. Mattingly, 1b	1,375	1,975	1,700	1,975	—
OAKLAND					
C. Codiroli, p	270	325	250	—	295
M. Davis, of	600	850	700	—	780
J. Howell, p	530	630	530	530	—
G. Nelson, p	205	400	300	—	325
T. Phillips, if	250	500	405	—	425
SEATTLE					
P. Bradley, of	475	750	550	750	—
A. Davis, 1b	400	535	450	—	480
B. Kearney, c	300	335	285	—	300
P. Ladd, p	100	275	160	—	170
M. Langston, p	188	420	342.5	—	370
M. Moore, p	400	575	440	—	500
M. Morgan, p	65	225	150	—	170
E. Nunez, p	250	287.5	200	—	200
K. Phelps, 1b	200	515	300	—	80
D. Ramos, if	85	100	70	—	80
TEXAS					
G. Harris, p	310	620	575	620	—
M. Mason, p	195	325	260	—	280
TORONTO					
J. Barfield, of	650	1,350	1,125	—	1,237.5
G. Bell, of	650	1,325	1,000	—	1,117.5
C. McMurtry, p	225.5	Withdrew			210
ATLANTA					
J. Acker, p	325	450	350	350	—
J. Dedmon, p	200	338	300	—	290
T. Harper, of	425	475	340	—	425
D. Palmer, p	335	725	725	—	725
D. Motley, of	257.5	257.5	210	210	—
CHICAGO CUBS					
None					
CINCINNATI					
N. Esasky, if	272.5	335	272.5	—	305
T. Power, p	500	610	500	500	—
M. Venable, of	225	260	210	—	235
HOUSTON					
K. Bass, of	310	630	560	630	—
B. Doran, 2b	550	825	625	625	—
D. Walling, 3b	366.667	595	450	595	—

for the services of players. Competitive bidding, when combined with the "Law of Increasing Desperation," played a large part in the rapid rise in player salaries during the first nine years of free agency. Obviously, when management completely controlled the salary process and controlled player movement free market pressures were almost non-existent, and salaries, as a result, remained artificially low.

It would, however, be a mistake to attribute the rise in salaries solely to free agency and the end of management control.⁷⁵ Salary arbitration

LOS ANGELES

D. Anderson, ss	200	250	200	—	225
O. Hershiser, p	1,000	1,100	800	800	—
M. Marshall, of	650	695	650	—	670
A. Pena, p	350	367.5	280	280	—
M. Young, p	205	390	325	—	350

MONTREAL

A. McGaffigan, p	180	350	250	—	292.5
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NEW YORK METS

W. Backman, 2b	325	600	500	—	550
R. Darling, p	440	1,050	800	1,050	—
D. Gooden, p	1,320	1,800	1,320	—	1,500
H. Johnson, if	227.5	320	265	—	297.5
K. McReynolds, of	275	825	625	625	—
D. Sisk, p	275	368	300	—	330
T. Teufel, 2b	200	315	240	—	277.5

PHILADELPHIA

K. Gross, p	350	530	420	420	—
G. Redus, of	350	440	350	—	400
J. Samuel, 2b	487.5	775	615	—	540

PITTSBURGH

M. Brown, of	225	260	200	—	212.5
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ST. LOUIS

D. Cox, p	380	875	600	600	—
B. Forsch, p	527.235	775	700	—	750
W. McGee, of	500	850	650	—	700

SAN DIEGO

D. Dravecky, p	350	615	475	—	575
A. Hawkins, p	300	535	450	535	—
C. Lefferts, p	390	520	450	—	500
M. Wynne, of	205	275	220	—	240

SAN FRANCISCO

C. Davis, of	690	840	775	—	815
M. Davis, p	350	460	385	—	415
C. Maldonado, of	170	440	390	—	415
E. Milner, of	350	525	450	—	490

USA Today, Feb. 23, 1987, at C8, col. 1.

75. Miller, *Arbitration of Baseball Salaries: Impartial Adjudication in Place of Management Fiat*, 38 ARB. J. 31, 33 (Dec. 1983) ("The increase (in salaries) demonstrates the unconscionable exploitation of players in earlier years.").

combined with free agency status artificially inflates salaries. Recall that one criterion for arbitrators is "comparative baseball salaries." These comparative salaries include those determined through free agency bidding, even though the circumstances surrounding an offered salary are far different from those incident to the actual awarding through arbitration.

It would be logical to assume that a team interested in a free agent is in search of a player to fill a certain, specific need that cannot be filled with existing players within the organization. Management is speculating that the free agent will be able to fill that perceived need. Factors affecting an offer are the probability that the player will perform at a certain expected level and the player's ability to draw fans to the stadium. Unlike salaries determined through the arbitration process, which considers past contributions to the team, free agency offers are based solely on what the interested team hopes the player will provide in the following season. Arbitration figures, then, operate as a reward for past excellence, while free agent salaries can be viewed as lures, buoyed by competitive bidding and the perceived urgency of the team's need.⁷⁶

As in any type of speculative venture, some free agents do not perform to the expectations of the team that signed them. In such a case, the "underachieving" agent has, from management's viewpoint, been overpaid, yet the player still earns the contracted sum. Of course, such a high-salary, low-performance combination is not limited to free agents, but free agents have the distinction of a salary determined more by free market forces and perhaps inflated bidding than non-agent players. The opportunity, then, for a large pay-performance disparity is generally greater for free agents than with other players.

This pay-performance disparity, while unpleasant to team owners, also affects other team owners. Future arbitration decisions, based in part on competitive salaries, will base decisions on these free agents' salaries. A player participating in arbitration can base his claim in part on the salary given a free agent by another team.

The result is a salary spiral that was unthinkable in 1975. Salaries

76. A player's recent performance is, of course, a large factor in determining the offer made in free agent bidding. Yet it is a factor only in the sense that it leads an interested team to believe that the agent will have another similarly productive season. No consideration is offered the free agent as a reward for past performance. He will be paid only on the basis of what his contribution is expected to be next season. To a certain extent, this is also true in arbitration. The salary to be determined is the player's salary for the upcoming season, not the previous season. However, a review of the criteria used to determine a salary in arbitration shows that an arbitrator's decision is based largely on what the player accomplished and what other players with similar ability earned. What management believes the player will be worth in the future is specifically excluded from the arbitrator's consideration. See *supra* note 67 and accompanying text.

rise during free agent bidding, and the general level of all players' salaries rises with the agent's salaries. Through arbitration and other salary negotiations between management and players, these salaries become part of the game's structure. Player participation in the salary determination process, then, may have had the unforeseen effect not only to remove the process from management's total control, but also of artificially stimulating salary levels by allowing "speculation" salaries to be integrated into the overall salary structure.

Some additional problems with arbitration and free agency resulting from management's desire to slow the rise of player's salaries can best be illustrated by examining the following three case studies.

A. Jack Morris

Morris is the most successful pitcher of the 1980's, compiling a 123-81 record since 1980 with the Detroit Tigers.⁷⁷ After the 1986 season, he announced his intention to try his luck on the free agent market. On December 16, 1986, he met with representatives of the Minnesota Twins and tendered offers based on the salaries of other successful major league pitchers. Morris offered to sign a contract and have the salary determined through the arbitration process. The offer was refused one day later.⁷⁸

Two days after this rejection, Morris made a similar offer to the New York Yankees.⁷⁹ Despite Morris' marketability, the Yankee owners stalled and declined to make Morris an offer.⁸⁰

On December 20, 1986, Morris re-signed with his former team, agreeing to have his salary determined by an arbitrator.⁸¹ The primary reason for his return was simply that no other team would agree to sign him, even at a price determined by an arbitrator. There was no free agent frenzy marked by unrestrained bidding. Although the salary arbitration process gives a player a role in determining his salary, it does not ensure a contract with the team of his choice. Morris simply returned to his former team and won the largest arbitration award up to that time.⁸²

B. Lance Parrish

Lance Parrish decided he would not return to his team, the Tigers, and rejected an offer of arbitration and a million dollar annual salary.

77. Chass, *Twins Reject Morris Demand*, N.Y. Times, Dec. 17, 1986, at D23, col. 2.

78. *Id.*

79. Chass, *Morris Makes His Offers and Steinbrenner Listens*, N.Y. Times, Dec. 19, 1986, at B5, col. 4.

80. Chass, *Morris Returns to Tigers After Rejection by Yankees*, N.Y. Times, Dec. 20, 1986, at 51, col. 4.

81. *Id.*

82. *See supra* note 64.

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He reportedly was seeking a one million dollar contract on the free agent market.⁸³ Parrish negotiated with the Philadelphia Phillies for almost three months before signing a contract that provided for only \$800,000 with possible performance bonuses amounting to \$450,000.⁸⁴ In all probability, this contract compensated him less than he would have made had he signed with his former employer.

C. Roger Clemens

Roger Clemens received both the American League's Cy Young Award (awarded annually to the best pitcher) and the Most Valuable Player Award in 1986 for his role in leading the Boston Red Sox to the American League pennant. However, because of the short length of time he has been in the League, he is ineligible for free agency or salary arbitration. On March 8, 1987, he left spring training camp because he had not yet signed a contract.⁸⁵ In 1986, Clemens was paid \$340,000, with an option to increase that salary to \$500,000 plus incentives amounting to \$850,000. Clemens, however, wanted \$2.4 million for two years. Since Clemens did not accept this option, the Red Sox renewed his old contract, as is their right under the reserve clause system. The team also levied a \$1,000 per day fine for missing training camp. Clemens responded that for every \$1,000 fine against him, he would increase his salary demand by \$1,500.⁸⁶ The two sides finally resolved their differences.⁸⁷

The Clemens situation illustrates the nature of contract negotiations prior to the salary arbitration system. Players dissatisfied with their contract offer had no recourse but to leave training camp and hope their absence would be felt. Under the current system, this problem has been eliminated in almost all cases.

These three examples demonstrate the advantages and disadvantages of present methods of dispute resolution used in major league baseball. The Clemens case demonstrates the problems that resulted before the arbitration system; spring training hold-outs and acrimonious relationships between players and owners. The system failed Clemens only because he had not been in the major leagues long enough to qualify for arbitration. The Parrish and Morris examples cast the free agent market in a restrained, somewhat collusive light, with interested teams making equitable offers and rejections to players, and with the players retaining the right to accept or reject. In all three of the cases, the owners

83. See *Baseball Notebook - Tigers*, The Sporting News, Jan. 5, 1987, at 58, col. 3.

84. The Columbus Dispatch (Associated Press), Mar. 13, 1987, at B1, col. 1.

85. *Id.*, Mar. 8, 1987, at E1, col. 4.

86. *Id.*, Mar. 12, 1987, at B4, col. 1.

87. Clemens rejoined the Red Sox in May and distinguished himself by winning his second consecutive Cy Young Award.

decided not to "go overboard" and participate in a bidding war against one another. No offers were made to any of 1986's free agents that were higher than the salaries currently being paid to other professional baseball players. Owners view this a return to fiscal sanity. Players view this collusion violative of trade.

VI. CONCLUSION

If there is an agreement between owners not to sign additional high-priced free agents, then perhaps baseball has come full cycle and returned to the days of "Orator Jim" O'Rourke and the secret reserve system. If this has occurred, then the game could be on the verge of a new player-management relationship. Arbitration and free agency opened the game to more player control, resulting in skyrocketing salaries. Management, reacting in an effort to slow this rise, discouraged competition in free agent biddings. Yet the arbitration system is still intact, and players continue to move between teams via free agency. Players have more control over their salaries than in the past, and their salaries have benefitted.

A dilemma remains. What type of remedy can be fashioned and enforced compelling owners to bid for free agents in a manner acceptable to the agents? Unless such a remedy is devised, forcing active management participation in the free agent market, player attempts at gaining more control and higher salaries through free agency may meet with a difficult obstacle—owner inaction. If permitted to remain inactive, baseball owners will have thrown the players an unhittable pitch.

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